

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-238

September 16, 2004

BANGOR HYDRO ELECTRIC COMPANY
Request for Waiver of Section 5 of BHE's
Terms and Conditions Section 9 of
Chapter 395.

ORDER GRANTING WAIVER
OF SECTION 5 OF BHE TERMS
AND CONDITIONS AND
SECTION 9 OF CHAPTER 395

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

I. SUMMARY

Pursuant to Chapter 395, § 10, I grant a request for waiver of Chapter 395, Section 9(D)(1), which requires a specific method for allocation of electric distribution line extension costs among customers who obtain service from the line extension. Section 9(D)(1) bases allocation on the distances of each customer from the beginning of the line extension. Under the waiver, the present and future customers attaching to the line extension in the Chambers Point Subdivision of Roque Bluffs¹ will share equally the costs of the line extension without regard to the location of those customers' connections to the line extension.

Section 5 of BHE's Terms and Conditions requires an allocation method that is essentially identical to the Rule, but, as in an earlier case, I decide that BHE may deviate from its Terms and Conditions pursuant to special contract as authorized by 35-A M.R.S.A § 703(3-A).

We find that Bangor Hydro has presented good cause for the waiver, as explained below.

II. DISCUSSION AND WAIVER

Section 10 of Chapter 395 allows either the Commission or the Director of Technical Analysis to waive any of the requirements of the Chapter that are not required by statute, provided that the waiver is not inconsistent with the purpose of Chapter 395 or Title 35-A.

¹ The Chambers Point line extension discussed in this Order is shown on the map entitled "Chambers Point Subdivision" filed in this case. The line extension is highlighted in yellow and run from lots 7 and 74 at the beginning of the line extension to lots 25 and 43 at the end.

Section 703(3-A) of Title 35-A allows a utility, with Commission approval, to enter “special” contracts with customers under which those customers may receive rates that differ from rates in the utility’s rate schedule or for which there are no rates in the rate schedule.

Chapter 395, Section 9, requires that when additional customers connect to line extensions within 20 years after the extension first provided service to a customer that the customers connecting to the line extension pay their proportionate cost of the portion of the existing line extension that they use. Section 9(D) states: “The costs of the line extension shall be reallocated among all customers based on the length of the line extension, which shall be equal to the length of the line extension that serves that customer exclusively plus, for each segment of the line extension that serves two or more customers, the length of that segment divided by the number of customers served by the segment, all divided the total length of the extension....”

The proposed waiver does not affect the cost of constructing the line extension or the total amount that customers must pay collectively. It affects only how that amount is allocated among customers who connect to the line extension.

BHE received a request from several potential customers to provide electric service to locations along the main access road within the Chambers Point Subdivision in Roque Bluffs. The proposed line extension would consist of approximately 5,000 feet of overhead single-phase primary line that could serve 50 lots. The potential customers requested that the total cost of the line extension be shared equally by the participating members, regardless of where they connect to the line.

Cynthia Hirning, described by BHE as the “contact person” for the project attempted to contact all 50 potential participants. She then sent a consent form to 22 lot owners (owning 28 lots) who had indicated a willingness to participate on an equal-cost basis. The consent form states that each signer had read a copy of a “draft” waiver request that BHE would be filing with the Commission and that, if the waiver were granted, allocation of the costs of the line “would be at an equal cost regardless of where the connection is along the proposed line extension.” All 22 owners who were sent the form returned it signed.

The “draft waiver request” attached to the consent forms stated that the allocation method under the Rule (customer shares dependent on the distance from the beginning of the line) and that, using that method, the costs per customer (based on the 28 lots interested in connecting) would be between \$250 and \$5,500. It also stated the expected cost per lot (\$1,692.30) based on equal shares per lot, regardless of distance from the beginning of the line.

The record in this case indicated that the only contact with those persons who had not signed the consent form was from Cynthia Hirning, and it was not fully clear whether those persons had received full information about the two alternatives. Accordingly, the Commission staff requested BHE to send a letter to the 12 persons

who had not signed the consent form. BHE sent a letter on August 5, 2004 explaining the cost allocation methodology under its Terms and Conditions (which are identical to the Commission's Rule) and the equal cost allocation requested in the waiver. The letter stated that customers should contact Denise Platt (the writer of the letter) if they had questions or objections to the proposed waiver. Although some of the recipients asked questions, she received no objections.

The waiver request states that granting the waiver so that all participants will pay on an equal basis makes construction of the line extension affordable to all potential connectors, so that more lot owners would participate and that without the waiver, a large number of the lot owners who are located nearer the end of the line extension might not participate. Under the allocation system required by the Rule, lot owners who connected closer to the beginning of the line extension would pay less than they would under an equal allocation system, but, for that result to occur, a sufficient number of the more distant lot owners (who would face a higher price than under the equal allocation) would have to decide to connect. If an insufficient number of the more-distant lot owners did not connect, the lot owners closer to the beginning of the line extension might well have to pay more than they would under an equal-allocation system. The lot owners closer to the beginning of the line apparently are will to take a calculated risk that they will more likely pay less under an equal allocation than they would under the allocation method under Section 9 of the Rule.

Necessarily, the waiver, if granted, must apply to the whole line, and must apply to all lot owners, regardless of whether they signed the consent form. It would be impossible to apply two different allocation methods to the same line extension.

Lot owners whose lots are beyond the proposed line extension (17 lots numbered 26 and 42 to 34 and 35) may have two options for receiving electric distribution service. They may request BHE to build or may themselves build a further extension from the end of the line extension that is the subject to this Order. The allocation of costs for that *further* line extension would be governed by the Rule unless those owners (or BHE on their behalf) applied for a waiver similar to that granted here, and the waiver was granted. The customers on the further line extension would also be required to contribute to the *earlier* line extension, as required by Chapter 395, § 9(E). To determine those customers' shares of the earlier extension, Section 9(E) provides that the customers served by the further extension shall be considered as being located at the point at which the new extension connects to the earlier extension. The question arises whether they should pay toward the earlier line extension based on distance or equally. For reasons described above (with regard to present non-participants actually located along the initial line extension), it is not practical to apply two different allocation systems to that initial line extension (equal shares for those located along it and distance-related shares for those located beyond in on the further line extension). Accordingly, I rule now the waiver granted by this order shall apply to all shares of the initial line extension, whether for those customers located along it or to those customers who may in the future be located along a further line extension.

Lot owners whose lots are beyond the proposed line extension have one other possible alternative. They may be able to extend the single phase primary from the pole closest to the Chambers Point Subdivision gate, at the beginning of the line extension, provided there is a road along which the line extension can be constructed. Line extensions constructed under this second option will be subject to the reallocation method in Chapter 395, Section 9 unless the customers seek a waiver such as is granted here.

BHE requested an expedited waiver in this case, because it cannot begin construction of this line extension until this special contract is approved and waivers of Chapter 395 and BHE's Terms and Conditions are granted.

For the reasons described above, I find that good cause exists to waive the allocation method described in Chapter 395, § 9(D) in favor of the method described in this Order and to approve BHE's special contract with Chambers Point Subdivision members, which in effect creates an exemption to Section 5 of its Terms and Conditions.

Dated at Augusta, Maine, this 16th day of September 2004.

BY ORDER OF THE DIRECTOR OF TECHNICAL ANALYSIS

Faith Huntington

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.